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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,813	11/14/2003	Robert J. Sweeney	20030228.ORI	2579
23595 7590 01/31/2007 NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER HOLMES, REX R	
			ART UNIT 3762	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/31/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/713,813

Applicant(s)

SWEENEY, ROBERT J.

Examiner

Rex Holmes

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/20/06 have been fully considered but they are not persuasive.
2. Applicant argues that the Lebel reference 2002/0065540 merely discloses sending data between an implant and a programmer, but fails to teach the sending and the storing of text messages. The term text message is vague and unclear and has no defined meaning in the art. Text messages are just digital data that are decoded into actual words in an external programmer. The Applicant further argues that the Lebel reference only indicates that it can store and send program code and not alpha/numeric text. Every letter and number is made up of a sequence of program code that represents the individual letter or number. This sequence when stored in combination with other sequences creates words and complex numbers. This combination of sequences is decoded to create the text messages. Lebel discloses that it transmits data back and forth between the programmer and the stimulator (§ 139). Lebel further discloses that the programmer decodes the information and displays it on the disclosed LCD display (§ 136).
3. The Applicant further argues that Lebel does not disclose periodically interrogating the memory with the external program. Lebel clearly states in § 139 that the external programmer periodically downloads the various portions of the internal

memory of the implantable device. Further it is shown that the interrogating is done at specific times (§ 183).

4. The Applicant also argues that Lebel does not disclose the use of a priority flag in combination with text messages. Paragraph 316 as cited in the previous rejection states that many different types of messages can be sent and received between the device and the external programmer. Paragraph 316 states that the messages may be compound messages that can perform multiple functions. Examples given of the types of messages are; alarms, miscellaneous messages to set parameters or perform various read operations, error messages, and data logs that can be read from or written to.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4-9 are rejected under 35 U.S.C. §102(b) as being anticipated by Lebel (U.S. Pub. 2002/0065540).

Lebel discloses a method providing an external programmer for transmitting and receiving data signals and for visually displaying information to a person (§ 5). The disclosed external programming unit is considered to anticipate the claimed external programmer because both devices are capable of providing signals to the implantable

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medical device through a programming head, which transmits, and receiving radio-frequency messages to and from the implant;

Lebel further discloses providing an implantable medical device having a microprocessor-based controller with a memory for storing text messages and a telemetry link for allowing duplex communication with said external programmer (§139). The disclosed microprocessor-based architecture is considered to anticipate the claimed invention because both provide a series of encoded signals to the implantable medical device, typically through a programming head, which transmits, or telemeters radio-frequency (RF) encoded signals to the medical device. Further, controlling the operation of the module and the exchange of data is permitted;

Lebel also discloses transmitting at least one text message from the external programmer to the implantable medical device over the telemetry link along with a text message initiation and termination date and a priority (§§ 84, 174, 274, 316). The disclosed transmission of short text messages is considered to anticipate the claimed transmission of at least one text message because both methods are done employing telemetry communication principles;

Lebel further discloses storing the at least one text message in said memory (§110). Lebel also discloses having memory to run executable instructions (§318). The disclosed use of the message service is considered to anticipate the claimed storing of the text message because both receive and keep short messages for subsequent relay to an external programmer/monitor for informing a clinician of certain events so that timely action can be taken;

Lebel subsequently discloses periodically interrogating the memory with said external programmer and reading out the at least one text messages over the telemetry link to the external programmer for visual display when the time of said interrogation falls between the initiation date and the termination date (§§ 183, 405). The disclosed interrogation of the communication module is considered to anticipate the claimed interrogation of the memory because both methods work to transmit the messages over the telemetry link according to a predetermined schedule stored in the memory.

Regarding claims 4-9, Lebel discloses that the priority flag in combination with the messages can change the frequency and timing of the text messages along with changing and clearing the priority flag one read by the external programmer (§§ 174, 316). Lebel further discloses a method including the step of updating the status of a given text message in the implantable medical device following the performance of a responsive action by a clinician to said text message presented on the visual display (§316). The disclosed method of updating patient operating parameters is considered to anticipate the claimed method of updating the status of a given text message because both change the status of the message displayed in response to feedback elicited from a physician or clinician.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rex Holmes whose telephone number is 571-272-8827. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Rex Holmes



George Evanisko

Primary Examiner

1/29/17